IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.976 OF 2004.

1. M/s. Ravi Estate
and Anr. .. Appellants.

V/s.

1. Smt. Murli Manohar Borkar. .. Respondent.

Shri N.V.Walawalkar with Shri G.S.Godbole for Appellants.

Ms. Shama Gokhale with Ms. P.P.Shinde for Respondent.

CORAM: ABHAY S.OKA J.
28th April, 2005

P.C.

1. Heard the counsel appearing for the parties.

2. The following substantial questions of law arise in this Second Appeal:-

1. Whether the Appellate Court has failed to perform its duty under the provisions of the Code of Civil Procedure, 1908, by not considering the oral and documentary evidence on record and by failing to record findings on all aspects of the controversy raised in the appeal?

2. Whether the judgement of the Appellate Court is perverse?.

3. Considering the facts and circumstances of the case and by consent of the parties, Second Appeal is taken up for hearing forthwith.

4. The Appellants are the original Defendants and the Respondent is the original Plaintiff. The Respondent/Plaintiff instituted the suit, inter alia, for declaration that the Agreement dated 9th December, 1983, between the parties in respect of the suit property is cancelled. The respondent/plaintiff also prayed for damages and other reliefs. The Appellants filed a counter claim alongwith the written statement. The prayer made in the counter claim was for the specific performance of the suit agreement.

5. The Trial Court decreed the suit by granting the declaration that the agreement for sale dated 9th December, 1983 has been cancelled. The Trial Court passed a decree for possession in favour of the respondent/plaintiff and directed the Appellant to pay the damages of Rs.1 lakh to the respondent/plaintiff. The Trail Court dismissed the counter claim.

6. An appeal was preferred by the Appellant in the

Court of District Judge and the said appeal came to the dismissed by the Additional District Judge.

7. The learned counsel appearing for the Appellants invited my attention to the findings recorded by the learned Trial Judge on various issues. He also invited my attention to the judgement of the Appellate Court. He pointed out that the Appellate Court has not even referred to the oral evidence of the parties and the reasoning of the Appellate Court is only in 3 or 4 paragraphs. He submitted that it was the duty of the Appellate Court to consider the oral and documentary evidence on record and to record findings after considering the same. The learned counsel appearing for the respondents has supported the impugned judgement and decree by pointing out various findings.

8. I have considered the rival submissions. The Trial Court has framed 8 issues. A perusal of the judgement of the Trial Court shows that a detailed reference was made to the documentary as well as oral evidence on record and after an elaborate discussion of the evidence, the findings have been recorded. Perusal of the judgement of the Appellate Court shows that the same is cryptic. The Appellate Court has framed as many as 9 points

for determination.

9. Paragraphs 7 to 10 of the Judgement of the Appellate Court refer only to the submissions made by the learned Advocates for the Parties. The discussion about the merits of the suit is in paragraphs 11 and 12. Paragraph 13 merely states that the conclusion drawn by the Trial Court is just and legal. Paragraph 14 only records that the appellants are not entitled to any relief in the counter claim.

10. it is a well settled position that while confirming the judgement of the Trial Court it is not necessary to record detailed reasons. However, it is equally well settled that the First Appellate Court is the final fact finding Court and therefore the Appellate Court is under an obligation to consider the oral and documentary evidence on record and decide the legality and validity of the documents produced on record of the Trial Court. The judgement of the Appellate Court must reflect that the evidence, both oral and documentary, is considered by the Appellate Court and after examining the findings of the Trial Court concurrence with the said findings is recorded. Unfortunately, in this case I find that there is

not even a reference to oral evidence led by the parties. Except for three documents namely the agreement, Power of Attorney and suit notice no other document is referred to by the Appellate Court. Perusal of paragraphs 11 to 14 of the judgement of the Appellate Court does not show that oral and documentary evidence was considered and was appreciated by the said Court. If the Appellate Court has not done its duty, interference is called for in the Second Appeal.

11. As the Appellate Court has not done its duty as observed above, there is no option but to set aside the said judgement and to remand the appeal to the Appellate Court.

12. There is some controversy as regards maintainability of the appeal in the District Court for challenging the decree passed in the counter claim made by the Appellants. The valuation of the counter claim was more than the claim in the suit. I find that this important aspect is not considered by the Appellate Court and without considering the said aspect, in paragraph 14 of the judgement it appears that the Appellate Court has dealt with merits of the counter claim. After remand, the Appellate Court will have to address itself on the said issue regarding the maintainability of the

Appeal in the District Court for challenging the Decree passed in Counter claim.

13. Hence, I pass the following order:-

a) The impugned Judgement and Decree dated 7th April, 2004, is quashed and set aside and Civil Appeal No.244 of 2003 is restored to file.

b) The parties are directed to appear before the learned 5th Additional District Judge, Pune, on 13th June, 2005.

c) The learned 5th Additional District Judge, Pune shall hear and decide the appeal afresh in the light of the observations made in this judgement as expeditiously as possible and preferably on or before 31st October, 2005.

d) If any interim relief was operating during the pendency of the appeal, the same will continue to operate till disposal of the appeal.

e) All contentions of the parties on merits are kept open.

f) The Appeal is partly allowed in above terms with no order as to costs.

g) Parties and concerned Court to act upon an authenticated copy of this Judgment.

h) No separate order in Civil Application No.1147 of 2004 is necessary in view of the disposal of the appeal. Civil Application does not survive and same is rejected.